

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4351

October 24, 2002

R E S O L U T I O N

(RES. W-4351), DEL ORO WATER COMPANY, LIME SADDLE DISTRICT (DOWC). ORDER AUTHORIZING THE ESTABLISHMENT OF A MEMORANDUM ACCOUNT FOR LITIGATION EXPENSES.

SUMMARY

By Advice Letter No. 109 and Supplement 109-A, filed July 25, 2002 and September 5, 2002, respectively, DOWC requests a surcharge of \$4.00 per month per customer for five years to recover the legal cost and other costs sustained in the legal actions filed with the Commission (Application (A) 00-11-053). Per Resolution No. W-4253, dated April 19, 2001, DOWC was authorized to establish a memorandum account to track the legal expenses pertaining to A.00-11-053 as well as those incurred in Superior Court Cases No. 124951 and No. 125188. This request will be addressed in a later resolution.

In addition, DOWC is requesting the authority to establish a memorandum account to track the costs of legal fees and other charges in association with a complaint filed on May 9, 2002 with the Commission (C.02-05-035). This resolution approves that request. DOWC is a Class B utility serving approximately 427 customers in its Lime Saddle District near Chico, California.

BACKGROUND

A complaint has been filed by Breuer, Inc. on May 9, 2002 with the Commission (C.02-05-035). The utility is requesting a memorandum account to track costs associated with this case.

DISCUSSION

The Division reviewed the utility's request to establish a memorandum account for litigation expenses in C.02-05-035 and recommends approval. These regulatory expenses are extraordinary and could not have been anticipated in the company's last general rate proceeding. The Commission did not authorize DOWC any allowance for legal expenses in its last general rate case. Although the Breuer's case C.02-05-35 has no direct impact on the rates, again, if the plaintiff prevails, the utility may have to pay back the contributions made by the plaintiff thereby increasing its rate base. This would result in increasing costs to existing ratepayers who would have to pay the return on a higher rate base. Thus it is in the ratepayers' interests that these cases be processed as professionally as possible.

A memorandum account is not a guarantee of eventual recovery of expenses, nor is it carried as a regular account under the uniform system of accounts for water utilities. It is carried "off the books", as a memorandum account. Commission policy on memorandum account treatment has always been that the burden of proof of the reasonableness of expenses charged to the account is the responsibility of the utility requesting reimbursement of such expenses.

Also, the Commission said in the Southern California Water Co. Headquarters case, Decision 92-03-094 (March 31, 1992) 43 Cal. P.U.C. 2d600:

"It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum account or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking. (Emphasis in original.)"

Therefore, we will only allow the tracking of those expenses incurred after the establishment of the account.

NOTICE AND PROTESTS

No customer notice is required. The utility must notice its customers when requesting amortization, and, at that time, the customers can provide public input on the reasonableness of any future recovery.

FINDINGS AND CONCLUSIONS

1. DOWC is incurring extraordinary expenses in its complaint case filed by Breuer, Inc. with the Commission (C.02-05-035).
2. Expeditious resolution of this case is in the public interest.
3. DOWC should be allowed to establish a legal and other regulatory expense memorandum account.
4. The Commission has approved memorandum accounts for water utilities for extraordinary legal expenses that could not have been foreseen in the last general rate increase.
5. The establishment of a memorandum account does not guarantee recovery of the expenses booked to that account.
6. The burden of proof as to the reasonableness of any recovery is on the utility.
7. Because the complaint is presently being adjudicated, this account should be effective as soon as possible.

THEREFORE IT IS ORDERED THAT:

1. Del Oro Water Company, Lime Saddle District, is authorized to establish a memorandum account for the costs of attorneys and other expenses for its litigation in Case C.02-05-035.

2. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on October 24, 2002; the following Commissioners voting favorably thereon:

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners